

Hon. John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION,  
a Delaware corporation,

Plaintiff,

v.

LEONID "LEO" RADVINSKY, an  
individual; CYBERPOWER PTY, LTD.,  
a foreign corporation; CYBERTANIA,  
INC., an Illinois corporation;  
ACTIVSOFT, INC., an Illinois  
corporation; and JOHN DOES 1-20,

Defendants.

No. CV4-2033C

ANSWER, AFFIRMATIVE  
DEFENSES, AND COUNTER-  
CLAIMS OF  
DEFENDANTS LEONID  
RADVINSKY, ACTIVSOFT,  
INC., CYBERPOWER PTY,  
LTD., AND CYBERTANIA, INC.

ANSWER

NOW COME defendants CYBERPOWER, PTY, LTD., LEONID "LEO"  
RADVINSKY, CYBERTANIA, INC., and ACTIVSOFT, INC., through their attorneys,  
THOMPSON GIPE, P.C., and respectfully Answer plaintiff's Complaint, as follows:

I. SUMMARY

NOTICE OF APPEARANCE FOR DEFENDANTS  
RADVINSKY AND ACTIVSOFT, INC.:1

THOMPSON GIPE  
Attorneys At law  
A Professional Corporation

1900 West Nickerson  
Suite 209  
Seattle, Washington 98119  
Phone: (206) 285-4130  
Facsimile: (206) 285-4610

1 Defendants deny each and every allegation proffered by plaintiff to the extent  
2 those allegations involve defendants. Defendants have insufficient knowledge to  
3 either admit or deny plaintiff's allegations to the extent those allegations involve  
4 plaintiff's business practices.  
5

## 6 II. JURISDICTION AND VENUE

7 1. With respect to Section I of Plaintiff's complaint, Defendants admit  
8 plaintiff's claim that it is bring ing suit under various state and/or federal laws; that it  
9 is seeking various forms of relief; and that this court appears to have jurisdiction over  
10 the claims alleged and the Defendants, but deny any suggestion that defendants  
11 have caused plaintiff any harm or that the events complained of by plaintiff involved  
12 defendants, whether those events occurred in the past, or are continuing to occur; all  
13 of paragraph 3 of Section I of Plaintiff's complaint; and deny that they, or any of  
14 them, has committed a tortious act, used personal property in the State of  
15 Washington, or have purposefully availed themselves of the opportunity to conduct  
16 commercial activities in the State of Washington.  
17

## 18 III. THE PARTIES

19 2. Defendants have insufficient information to either admit or deny  
20 plaintiff's allegation No. 7.  
21

22 3. With respect to Plaintiff's complaint section 8, Defendant Leonid "Leo"  
23 Radvinsky, (hereinafter "Radvinsky"), admits he is an individual residing in Illinois  
24 and has ownership and/or operating interests in defendants Cyperpower,  
25 Cybertainia, and ActivSoft. Radvinsky admits that he is the owner of internet  
26 websites which advertised "Free Grants," including the websites  
27

1 <[www.grantgiveawsays.com](http://www.grantgiveawsays.com)> and <[www.freegrantsnow.com](http://www.freegrantsnow.com)>, but denies he is the  
2 owner of <[www.mygrantnow.org](http://www.mygrantnow.org)>, <[www.securedgrant.com](http://www.securedgrant.com)>, and  
3 <[www.yourfreegrant.com](http://www.yourfreegrant.com)>. Defendant Radvinsky has insufficient information to either  
4 admit or deny the remainder of plaintiff's allegation No. 8, and accordingly, demands  
5 strict proof thereof.  
6

7 4. With respect to Plaintiff's complaint section 9, Defendant Cyberpower  
8 Pty, Ltd., ( hereinafter, "Cyberpower"), denies it is a foreign corporation.

9 5. With respect to Plaintiff's complaint section 10, Defendant Cybertania  
10 admits that it is an Illinois corporation with its principal place of business in Glenview,  
11 Illinois.  
12

13 6. Plaintiff's allegation No.12 is not directed to defendants Cyberpower,  
14 Radvinsky Cybertania and Activsoft, and so these defendants do not Answer.  
15 Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny each and every  
16 element of plaintiff's allegation No. 12.  
17

18 7. Defendants deny paragraph 13 of Plaintiff's complaint.

19 IV. NATURE OF MISCROSFOT'S INTERNET EMAIL SERVICES

20 8. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
21 insufficient information to either admit or deny plaintiff's allegation No. 14, and  
22 accordingly demands strict proof thereof.  
23

24 9. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
25 insufficient information to either admit or deny plaintiff's allegation No. 15, and  
26 accordingly demands strict proof thereof.  
27

1           10. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
2 insufficient information to either admit or deny plaintiff's allegation No. 16, and  
3 accordingly demands strict proof thereof.  
4

5           11. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
6 insufficient information to either admit or deny plaintiff's allegation No. 17, and  
7 accordingly demands strict proof thereof.  
8

9           12. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
10 insufficient information to either admit or deny plaintiff's allegation No. 18, and  
11 accordingly demands strict proof thereof.  
12

13           13. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
14 insufficient information to either admit or deny plaintiff's allegation No. 19, and  
15 accordingly demands strict proof thereof.  
16

17           14. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
18 insufficient information to either admit or deny plaintiff's allegation No. 20, and  
19 accordingly demands strict proof thereof.  
20

21           15. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
22 insufficient information to either admit or deny plaintiff's allegation No. 21, and  
23 accordingly demands strict proof thereof.  
24

25           16. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
26 insufficient information to either admit or deny plaintiff's allegation No. 22, and  
27 accordingly demands strict proof thereof.

1           17. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
2 insufficient information to either admit or deny plaintiff's allegation No. 23, and  
3 accordingly demands strict proof thereof.  
4

5           18. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft have  
6 insufficient information to either admit or deny plaintiff's allegation No. 24, and  
7 accordingly demands strict proof thereof.  
8

9           V. DEFENDANTS' UNLAWFUL CONDUCT

10           19. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
11 each and every element of plaintiff's allegation No. 25.

12           20. To the extent not already admitted or denied herein, Defendants  
13 Cyberpower, Radvinsky, Cybertania and Activsoft admit plaintiff's allegation No. 26.

14           21. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
15 each and every element of plaintiff's allegation No. 27.  
16

17           22. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
18 each and every element of plaintiff's allegation No. 28.

19           23. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
20 each and every element of plaintiff's allegation No. 29.

21           24. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
22 each and every element of plaintiff's allegation No. 30.  
23

24           25. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
25 each and every element of plaintiff's allegation No. 31.  
26  
27

1           26. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft lack  
2 sufficient information to admit or deny paragraph 32 of Plaintiff's complaint, and so  
3 deny each and every element of plaintiff's allegation No. 32.  
4

5           27. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft lack  
6 sufficient information to admit or deny paragraph 33 of Plaintiff's complaint, and so  
7 deny each and every element of plaintiff's allegation No. 33.  
8

9 COUNT I

10 VIOLATION OF THE CAN-SPAM ACT

11           28. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft re-  
12 assert their answers to paragraphs 1-27, hereinabove, as if those answers are  
13 restated as defendants' answer to plaintiff's allegation No. 34.

14           29. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
15 each and every element of plaintiff's allegation No. 35.  
16

17           30. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
18 each and every element of plaintiff's allegation No. 36.

19           31. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
20 each and every element of plaintiff's allegation No. 37.  
21

22           32. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
23 each and every element of plaintiff's allegation No. 38.

24 COUNT II

25 OTHER VIOLATIONS OF THE CAN-SPAM ACT  
26  
27

1           33. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft re-  
2 assert their answers to paragraphs 1-32, hereinabove, as if those answers are  
3 restated as defendants' answer to plaintiff's allegation No. 39.

4           34. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
5 each and every element of plaintiff's allegation No. 40 and its subparts.

6           35. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
7 each and every element of plaintiff's allegation No. 41.

8           36. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
9 each and every element of plaintiff's allegation No. 42.

10           37. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
11 each and every element of plaintiff's allegation No. 43.

12  
13  
14 COUNT III

15 TRESPASS TO CHATTELS

16           38. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft re-  
17 assert their answers to paragraphs 1-37, hereinabove, as if those answers are  
18 restated as defendants' answer to plaintiff's allegation No. 44.

19           39. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft lack  
20 sufficient information to admit or deny paragraph 45 of Plaintiff's complaint, and so  
21 deny the whole thereof.

22           40. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
23 each and every element of plaintiff's allegation No. 46.

24           41. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
25 each and every element of plaintiff's allegation No. 47.

1           42. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
2 each and every element of plaintiff's allegation No. 48.

3 COUNT IV

4 VIOLATION OF THE WASHINGTON COMMERCIAL ELECTRONIC MAIL ACT AND  
5  
6 CONSUMER PROTECTION ACT

7           43. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft re-  
8 assert their answers to paragraphs 1-42, hereinabove, as if those answers are  
9 restated as defendants' answer to plaintiff's allegation No. 52.

10           44. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
11 each and every element of plaintiff's allegation No. 53, and subparts thereof.

12           45. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
13 each and every element of plaintiff's allegation No. 54.

14           46. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
15 each and every element of plaintiff's allegation No. 55.

16           47. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
17 each and every element of plaintiff's allegation No. 56.

18 COUNT V

19 VIOLATION OF THE FEDERAL COMPUTER FRAUD AND ABUSE ACT

20           48. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft re-  
21 assert their answers to paragraphs 1-47, hereinabove, as if those answers are  
22 restated as defendants' answer to plaintiff's allegation No. 57.

23           49. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
24 each and every element of plaintiff's allegation No. 58.



1           50. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
2 each and every element of plaintiff's allegation No. 59.

3           51. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
4 each and every element of plaintiff's allegation No. 60.

5  
6 COUNT VI

7 OTHER VIOLATION OF THE FEDERAL COMPUTER FRAUD AND ABUSE ACT

8           52. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft re-  
9 assert their answers to paragraphs 1-51, hereinabove, as if those answers are  
10 restated as defendants' answer to plaintiff's allegation No. 61.

11  
12           53. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
13 each and every element of plaintiff's allegation No. 62.

14           54. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
15 each and every element of plaintiff's allegation No. 63.

16  
17           55. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
18 each and every element of plaintiff's allegation No. 64.

19 COUNT VII

20 VIOLATION OF THE LANHAM ACT

21           56. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft re-  
22 assert their answers to paragraphs 1-55, hereinabove, as if those answers are  
23 restated as defendants' answer to plaintiff's allegation No. 65.

24  
25           57. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
26 each and every element of plaintiff's allegation No. 66.

1           58. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
2 each and every element of plaintiff's allegation No. 67.

3           59. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
4 each and every element of plaintiff's allegation No. 68.

5           60. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
6 each and every element of plaintiff's allegation No. 68.

7           61. Defendants Cyberpower, Radvinsky, Cybertania and Activsoft deny  
8 each and every element of plaintiff's allegation No. 69.

9  
10  
11 AFFIRMATIVE DEFENSES

12 55. Defendant alleges the following affirmative defenses:

- 13           a. Improper service;  
14           b. Improper venue;  
15           c. Fault of a non-party;  
16           d. Fault of the plaintiff;  
17           g. Laches;  
18           e. Estoppel;  
19           f. Waiver;  
20           g. Assumption of risk;  
21           h. Contributory negligence;  
22           i. fraud or illegality;  
23           j. Defendant reserves the right to amend its answer to include other and  
24  
25 further affirmative defenses, as they become known to defendant.  
26  
27

COUNTERCLAIMS/CROSS-CLAIMS

## JURY DEMAND

Defendants Cyberpower, Radvinsky, Cybertania and Activsoft hereby demand a trial by jury of all issues related hereto.

**WHEREFORE**, defendants Cyberpower, Radvinsky, Cybertania and Activsoft respectfully pray that this Honorable Court enter an Order:

/s/ Lindsay Thompson  
Lindsay Thompson, WSBA 15432  
Thompson Gipe, P.C.  
Attorneys for Defendants  
Radvinsky, Activsoft and Cyberpower, Inc.  
1900 W. Nickerson Street, Suite 209  
Seattle WA 98119-1650  
(206) 285-4130

1 CERTIFICATE OF SERVICE

2 I hereby certify that on October 13, 2004 I electronically filed the foregoing  
3 Notice of Appearance for Defendants Radvinsky, Activsoft, Inc. and Cyberpower Pty,  
4 Ltd. using the CM/ECF system which will send notification of such filing to the  
5 following: David Bateman and Robert Dzielak, counsel for plaintiff.

6 /S/ Lindsay Thompson  
7 Lindsay Thompson  
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